

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 882

Introduced by Senator Corbett

January 14, 2010

An act to add Sections 16005 and 16106 to the Business and Professions Code, *and to add Section 118941 to the Health and Safety Code*, relating to tobacco, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 882, as amended, Corbett. Tobacco: electronic cigarettes.

Existing law makes it unlawful to smoke in private or public transportation, as specified, and makes a violation of the law punishable as an infraction. Existing law authorizes cities and counties to issue business licenses, set licensing fees, and collect licensing fees. Existing law requires cities and counties to revoke the license of a business that engages in human cloning, as specified.

This bill would make it unlawful for a person to sell or otherwise furnish an electronic cigarette to a person under 18 years of age and would make a violation punishable as an infraction. By creating a new infraction, this bill would impose a state-mandated local program. This bill would require cities and counties to revoke the license of a business that, on 2 or more occasions, provides or offers to provide electronic cigarettes to a person under 18 years of age. By adding to the duties of city and county officials, this bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature hereby finds and declares
- 2 all of the following:
- 3 (1) Electronic cigarettes are ~~currently unregulated~~ *not actively*
- 4 *regulated* by the United States Food and Drug Administration
- 5 (FDA) and are available for purchase in this state.
- 6 (2) Initial FDA studies found that electronic cigarettes contain
- 7 known carcinogens and misrepresent nicotine content on their
- 8 labels. As a result, the FDA has warned the public about the
- 9 potential health risks of using electronic cigarettes.
- 10 (3) Electronic cigarettes offered for sale in this state are
- 11 produced overseas and ~~not covered by~~ *currently subject to* state
- 12 and federal quality control protections.
- 13 (4) Since electronic cigarettes are not regulated at the federal,
- 14 state, or local level, they can be legally sold to minors.
- 15 (5) County tobacco control programs have reported the
- 16 attempted sale of electronic cigarettes to minors at shopping malls.
- 17 Throughout the state, retailers have established shopping mall
- 18 kiosks near food courts and stores frequented by adolescents. At

1 these kiosks, retailers target teens with pitches for electronic
2 cigarettes with flavored cartridges.

3 (6) A 2008 report prepared for the State Department of Public
4 Health found, with regard to the California Tobacco Control
5 Program, that law enforcement agencies continue to rank policies
6 and procedures, such as suspension or revocation of business
7 licenses and civil and criminal penalties for owners and clerks who
8 sell tobacco to minors, as effective strategies to reduce youth access
9 to tobacco.

10 (b) The Legislature finds and declares that due to important
11 health, safety, and welfare concerns that affect the entire state,
12 ~~regardless of location~~, regulating the sale to and use by minors of
13 electronic cigarettes is a statewide concern, and not a municipal
14 affair.

15 SEC. 2. Section 16005 is added to the Business and Professions
16 Code, to read:

17 16005. (a) ~~Any~~ A license issued to a business pursuant to this
18 chapter shall be revoked upon notification by a law enforcement
19 agency that a person who owns or is employed by the business
20 has, on two or more occasions, sold, furnished, administered,
21 distributed, given away, or offered to sell, furnish, administer,
22 distribute, or give away an electronic cigarette, to a person under
23 18 years of age, *as prohibited by Section 118941 of the Health and*
24 *Safety Code.*

25 ~~(b) As used in this section, “electronic cigarette” means any~~
26 ~~device that can provide inhaled doses of nicotine by delivering a~~
27 ~~vaporized solution.~~

28 ~~(c) This section applies to general law and charter cities.~~

29 ~~(b) This section does not preempt or otherwise prohibit a city~~
30 ~~from adopting an ordinance that imposes a more restrictive~~
31 ~~regulation on the sale of electronic cigarettes.~~

32 SEC. 3. Section 16106 is added to the Business and Professions
33 Code, to read:

34 16106. (a) ~~Any~~ A license issued to a business pursuant to this
35 chapter shall be revoked upon notification by a law enforcement
36 agency that a person who owns or is employed by the business
37 has, on two or more occasions, sold, furnished, administered,
38 distributed, given away, or offered to sell, furnish, administer,
39 distribute, or give away an electronic cigarette, to a person under

1 18 years of age, as prohibited by Section 118941 of the Health and
2 Safety Code.

3 ~~(b) As used in this section, “electronic cigarette” means any~~
4 ~~device that can provide inhaled doses of nicotine by delivering a~~
5 ~~vaporized solution.~~

6 ~~(e) This section applies to general law and charter counties.~~

7 ~~(b) This section does not preempt or otherwise prohibit a county~~
8 ~~from adopting an ordinance that imposes a more restrictive~~
9 ~~regulation on the sale of electronic cigarettes.~~

10 SEC. 4. Section 118941 is added to the Health and Safety Code,
11 to read:

12 118941. (a) It is unlawful for a person to sell or otherwise
13 furnish an electronic cigarette, as defined in subdivision (b), to a
14 person under 18 years of age.

15 (b) “Electronic cigarette” means a device that can provide an
16 inhalable dose of nicotine by delivering a vaporized solution.

17 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
18 ~~Section 6 of Article XIII B of the California Constitution because~~
19 ~~a local agency or school district has the authority to levy service~~
20 ~~charges, fees, or assessments sufficient to pay for the program or~~
21 ~~level of service mandated by this act, within the meaning of Section~~
22 ~~17556 of the Government Code.~~

23 SEC. 5. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution for certain
25 costs that may be incurred by a local agency or school district
26 because, in that regard, this act creates a new crime or infraction,
27 eliminates a crime or infraction, or changes the penalty for a crime
28 or infraction, within the meaning of Section 17556 of the
29 Government Code, or changes the definition of a crime within the
30 meaning of Section 6 of Article XIII B of the California
31 Constitution.

32 However, if the Commission on State Mandates determines that
33 this act contains other costs mandated by the state, reimbursement
34 to local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.

37 ~~SEC. 5.~~

38 SEC. 6. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to protect the health of minors from a product with
4 contents that have not been comprehensively studied and are
5 unregulated on the market, it is necessary for this bill to go into
6 immediate effect.

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9 CORRECTIONS: _____

10 Text—Page 2.

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